

Alabama Rules of Criminal Procedure

Rule 4. Arrest and initial appearance.

Rule 4.3. Procedure upon arrest.

(a) ON ARREST WITHOUT A WARRANT.

(1) A person arrested without a warrant:

(i) May be cited by a law enforcement officer to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of and may be released; or

(ii) May be released by a law enforcement officer upon execution of an appearance bond or a secured appearance bond in an amount set according to the schedule contained in Rule 7.2, and directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of; or

(iii) Shall be afforded an opportunity to make bail in accordance with Rules 4.3(b)(3) and 4.4. A judge or magistrate in the county of arrest shall determine whether probable cause exists to believe that the defendant committed the charged offense, by examining any necessary witnesses in accordance with the procedures for making a probable cause determination provided in Rule 2.4. If the judge or magistrate finds there is probable cause for the arrest of the person, a complaint shall promptly be prepared, filed, and served on the defendant, and the judge or magistrate shall proceed as provided in Rule 4.4 for initial appearance. If a probable cause determination is not made by a judge or magistrate without undue delay, and in no event later than forty-eight (48) hours after arrest, then, unless the offense for which the person was arrested is not a bailable offense, the person shall be released upon execution of an appearance bond in the amount of the minimum bond set in Rule 7.2, and shall be directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of; or

(iv) In the event the defendant is released on the minimum bond amount provided in the bail schedule, the prosecutor may file a motion with the court to reconsider the bond amount and the conditions of release, and the procedures thereafter shall be in accordance with Rule 7.5.

(2) If a person arrested without a warrant has been released and cited or directed to appear without having been taken before a judge or magistrate for a probable cause determination, the officer or private person who made the arrest

shall without undue delay make a complaint before a judge or magistrate as provided in Rules 2.3 and 2.4. If the judge or magistrate finds probable cause, the complaint shall be served on the defendant in the manner provided in Rule 3.4 for service of summons, or shall be delivered to the defendant at the time of the defendant's appearance. If the judge or magistrate does not find probable cause, the person arrested shall promptly be notified and advised that an appearance will not be required. Notification shall be made by the magistrate or clerk of the court by mail directed to the defendant at the defendant's last known address.

(b) ON ARREST WITH A WARRANT.

(1) If provision therefor has been made by the judge or magistrate issuing the arrest warrant, a person arrested with a warrant shall be released on an appearance bond in the amount set in accordance with the schedule contained in Rule 7.2 and directed to appear either at a specified time and place or at such time and place as he or she shall be subsequently notified of.

(2) If the person arrested cannot meet the conditions of release provided on the warrant, or if no such conditions are prescribed or provided for,

(i) If such person was arrested pursuant to a warrant issued upon a complaint, he or she shall be taken without undue delay, except in no event later than seventy-two (72) hours after arrest, before a judge or magistrate, who shall proceed as provided in Rule 4.4, or

(ii) If such person was arrested pursuant to a warrant issued upon an indictment, he or she shall be taken without undue delay, except in no event later than seventy-two (72) hours after arrest, before a circuit judge, who shall proceed as provided in Rule 4.4.

(3) If the person arrested cannot meet the conditions of release and has not been taken before a judge or magistrate in the case of a warrant issued on a complaint, or has not been taken before the circuit court in the case of a warrant issued on an indictment, without undue delay, except in either case in no event later than seventy-two (72) hours after arrest, unless the charge upon which the person was arrested is not a bailable offense, such person shall be released upon execution of an appearance bond in the minimum amount required by the schedule set forth in Rule 7 and directed to appear for arraignment either at a specified time and place or at such time and place as he or she shall be subsequently notified of.

(4) Upon request, the defendant shall be given a copy of the charges against him or her.

(c) ASSURANCE OF AVAILABILITY OF JUDGE OR MAGISTRATE. The judge or presiding judge and the clerk of the appropriate court shall take such steps as are necessary to assure that a judge or magistrate with appropriate authority is available in the county to hold initial appearances as required by Rules 4.3(a)(1)(iii) and 4.3(b)(2)(i).

[Amended eff. 3-3-92; Amended eff 8-1-97.]

**Committee Comments as Amended to Conform to Rule as Amended
Effective August 1, 1997**

Rule 4.3(a) lists the options available to law enforcement officers in the case of warrantless arrests. An officer may (1) issue a citation to the person to appear at a specified time and place or at such time and place as the offender will be subsequently notified of, and release the offender (release on personal recognizance); (2) release the offender upon execution of an appearance bond (secured or unsecured) in an amount set according to the bail schedule provided in Rule 7.2 and direct the offender to appear at a specified or subsequently scheduled time and place; or (3) take the offender into custody and provide the offender an opportunity to make bail. Although release by law enforcement officers upon execution of an appearance bond is specifically authorized by the rule, law enforcement officers continue to be prohibited from accepting cash bond, pursuant to § 32-5-310, Ala.Code 1975.

Rule 4.3(a)(1)(iii) is based on the United States Supreme Court's holding in *Gerstein v. Pugh*, 420 U.S. 103 (1975), requiring a probable cause hearing by a neutral magistrate or judge where the defendant is detained on a warrantless arrest. After the Supreme Court's holding in *Riverside v. McLaughlin*, 500 U.S. 44 (1991), this subsection was amended to require that a probable cause hearing be held within 48 hours in a warrantless arrest situation where a defendant remains in custody and to omit the provision that required that the defendant be brought before a judge or magistrate for the hearing; because the defendant's presence was neither constitutionally nor statutorily required.

If a probable cause hearing is not held within 48 hours of arrest, the person detained must be released upon execution of an appearance bond in the minimum amount set pursuant to the Rule 7.2 bail schedule, and directed to appear at a specified time and place or at such time and place as he or she shall be subsequently notified of.

Pursuant to Rule 4.3(a)(2), probable cause hearings must also be conducted "without undue delay" where the defendant is released. If probable cause is found, the complaint may be given to the defendant at the defendant's first appearance or may be delivered by personal service or by certified mail, return receipt requested. Under this procedure, many, if not most, defendants will

make their first court appearance at arraignment, or perhaps even at trial if arraignment is waived. Those defendants who cannot obtain release will be entitled to an initial appearance before a disinterested judge or magistrate within 72 hours.

In the event no probable cause for the arrest is found and no complaint is issued, the court clerk or magistrate must promptly notify the offender by mail that he or she will not be required to appear in court.

A person arrested pursuant to a warrant is in a different situation. If the warrant is issued on a complaint or an indictment, there has been an ex parte probable cause determination by a judge, a magistrate, or a grand jury. The issuing judge or magistrate usually will also have set conditions of release. Even so, if the person cannot obtain his or her release, the person is entitled to go before a judge or magistrate within 72 hours after arrest for an initial appearance, unless the arrest is pursuant to a warrant issued on an indictment, in which case authority to set or to review release conditions is reserved to the circuit court. Review by the circuit court must be within seventy-two (72) hours after arrest.